

**Oslo, 10.10.2018**

EFTA Surveillance Authority  
Internal Market Affairs unit  
Rue Belliard 35  
B-1040 Brussels  
Belgium

**COMMENTS ON CASE CLOSURE  
CASE 78465**

**1. The closure decision**

Norway's migration to digital audio broadcasting (DAB) does not breach EEA rules. This is the conclusion of the EFTA Surveillance Authority (ESA), which Oct.10 2018 closed a complaint case concerning the coordinated switchover to digital radio in Norway.

**2. Our comments on the the closure decision.**

In regard of our request on comments – we regret – as the representative from the consumer and end user - the subject that the Authority now closes the case 78465 without including the consumers experience in the case.

This is not a great day for the consumers (listeners) and does not lift the trust to the Authority from the general public in Norway.

The *Norwegian Radio Listeners Association* (NRLF) regret this decision and is also critical to how the Ministry has informed and misled the Authority.

NRLF expects that the Ministry maintains an independent stance regarding DAB promoting interests. However, the Ministry has not presented a reply to questions by ESA with expected objectivity and sincerity. The text is misleading and contradictory in many parts.

Therefore, we found it absolute necessary to comment the latest answer from the Ministry of Culture, as the current comment does not have support from our organization representing the end user with our daily communication with end users. The current decision from the Authority is based on the feedback from the Ministry of Culture which is clearly very biased.

NRLF is hereby offering comments on the answer from the Ministry of Culture. This comment is therefore from a consumer/public point of view and for the matter of general interest of the end user.

### **General overview of digital radio**

FM is the major platform for terrestrial radio broadcasting in all 220 countries of the world. This is a well-established and robust system which is predicted to last for many decades to come. There are estimated (based on UNESCO numbers) 6 billion FM receivers in the world compares with 60 million DAB receivers sold since 1995.

DAB is one of several systems for terrestrial digital radio. It was introduced 1995 and is established as complement system mainly in Western Europe and Australia. In other parts of the world other systems are established as DRM in India and Russia, CDR in China, ISDB-Tsb in Japan and HD Radio in the United States. DAB is being introduced to several European countries but there is a feeble listening interest as radio and music listening on mobile and fixed broadband is the only true challenge for FM radio. Smartphones will not come with DAB.

### **The current situation in Norway**

Norway is the first country - and still the only - to replace FM with DAB for its national radio 2017. In order to establish DAB+ as the major platform for radio in Norway there are specific plans to enforce local radio (commercial and community) to make a transition from FM to DAB from 2022.

There are, however, no plans for the future use of a vacant FM band 87,5-108 MHz in Norway. This spectrum can only be used for radio

broadcasting according to international agreements (ITU). Norway's neighbours Finland, Sweden and Russia will retain FM as the major terrestrial radio platform. Probably also Denmark will retain FM.

NRLF expects that the Ministry maintains an independent stance regarding DAB promoting interests. However, we dispute that the Ministry has presented this reply to the Authority with expected objectivity and sincerity. Unfortunately, we have found that the text is misleading and contradictory in many parts.

Here are our some of our comments in connection to four of your five questions with our comments to the Ministry's latest replies.

*Letter to the European Surveillance Authority from the Ministry of Culture Sep 21, 2018:*

Comments in connection to four of ESA:s five questions to the replies by Øyvind Christensen, Director at the Ministry of Culture.

### *Question 1*

*ESA: Could you please explain how the Norwegian government's decision to switch off FM frequencies in the four big cities complies with the provisions of the Regulatory Framework for Electronic Communications, in particular Articles 8 and 9 of the Framework Directive (2002/19/EC), Article 5(2) and 7 of the Authorization Directive (2002/20/EC) and the Radio Spectrum Decision (676/2002/EC)?*

#### **1.**

The mentioned *general interest objectives, such as the freedom of expression and information, media pluralism, impartiality, cultural and linguistic diversity, social inclusion, consumer protection and the protection of minors* are NOT pursued by the digitalization of terrestrial radio in Norway as claimed by the Ministry of Culture.

The process rather contradicts these objectives as it *concentrates power of media ownership* to three major undertakings; the state-owned NRK and two commercial media conglomerates Bauer and MTG (NENT). There are still few local radio stations on DAB in Norway. Most of them are still on FM and also want to stay on FM beyond 2021 as FM is the main platform for local content.

These three DAB broadcasters are providing 30+ channels. Except NRK P1 and P2 most content is music flow with no publicistic content (news, reports, debate etc) without any regional or local content or local/regional abutment. It is hard to see if this will benefit *freedom of expression and information pluralism*. The content is also excluding several dialects and Norwegian culture.

Most non-profit community radio stations on FM today cater to *cultural and linguistic minorities* in Norway for example a Latin-American station in Oslo.

Community radio stations are always run on a tight budget and surviving thanks to voluntary work. Most such radio stations, which own their own FM transmitters, are at great risk to disappear if being forced off FM because running a channel on a DAB multiplex, owned by another commercial operator, will be too expensive. Also community radio is very much depending on its audience which probably will not be staying if migrating to DAB.

Please note that local radio stations own and operate their own FM transmitters. It would not render the government budget any costs to let them stay on FM after 2021.

The policy of the two pan-European organisations for community radio Community Media Forum Europe (Brussels) and AMARC Europe is to retain FM and if digitalizing DRM+ is preferred rather than DAB+. The European organisation for local commercial radio AER (Brussels) also want to retain FM.

The *consumers* are not protected in this digital transition. In order to be able to continue listen to national radio they are forced to replace their FM receivers with very expensive DAB-able receivers. The consumers did not receive any reimbursement by the government or the national broadcasters.

It is quite difficult to understand the Ministry of Culture's claim that the decision not to issue licensees in four major cities was necessary and justified by these general interest objectives.

This decision was made after initiative by one of the commercial broadcasters. Our conclusion is that the intention clearly was to protect the economic interests of the two commercial broadcasters. The decision is therefore not justified for the general interest.

### **2-3.**

The decision does in fact constitute a direct limitation on the use of frequencies on a free open market in the common market. Ministry of Culture emphasizes that the Regulatory Framework for Electronic Communications provides a strong legal basis for taking into account general interest objectives, in particular media pluralism, cultural diversity and consumer protection. DAB is in fact a closed shop with too high thresholds for local radio to be able to join (see also point 1 above). The consumers have not been protected by this set up.

Regarding the Norwegian Communication Authority (NRA) regulatory tasks as the promotion of technology neutrality, effective competition, development of the internal market, promotion of the citizens interests the transition to DAB is rather a hindrance.

If the Norwegian Communication Authority has awarded licenses to electronic communication services to provide capacity in the FM band to radio services this has not been in accordance with the international agreement to use this band exclusively for radio broadcasting, not radio communications.

We reject the ministry conclusion that the Government's decision to limit the number of licenses for broadcasting in the FM band is consistent with the directives in this area and the general rules of the EEA Agreement. In fact the decision is overwhelmingly counteracting the directives and the general rules.

The Ministry of Culture points out that the EU has actively promoted the digitization of broadcasting services. However, this is *an acknowledgement of technical benefits of digital systems in general* not a promotion of specific technology such as DAB. For television this is

DVB-T2, for radio there is also other technologies like DRM, DVB-T2 Lite and some other systems besides DAB.

We would also put to your attention that mobile broadband is developed for radio broadcasting LTE Broadcast on 4G and 5G. This fall this digital system is being tested on 5G by Bayrische Rundfunk in Munich and BBC in Scotland.

### *Question 2*

*Could you please share with us advantages/shortcomings you observed after the FM switch off took place, also in terms of availability of radio services to consumers throughout Norway?*

#### **Our comments point 3 - Media pluralism - Population coverage/universal access to services**

”NRK's 14 DAB services cover 99,7 per cent of the population” sounds impressive. However, this is not GEOGRAPHICAL/LAND coverage. DAB coverage is fully or partly missing for many countryside roads, the seaways and the outbacks where lots of people travel for work, holidays and tourism. We also want to emphasize that most foreign registered cars including busses and trucks on the Norwegian roads are not and probably will not be equipped with DAB radio.

It is not true that entire population have access to a wide range of radio channels on DAB. This is because the DAB reception reported from the consumer, does not match the promised user experience. The often hidden truth is that an FM transmitter in general has twice the geographical coverage compared to a DAB transmitter. Theoretically it is 30 channels, but with deficient reception people turn to local radio on FM or online via mobile broadband.

The Ministry is not keen to tell you that there is still a widespread discontent by the Norwegian citizens. This is well documented in several social media discussion groups with more than 10.000 followers. It is also quite difficult to find any positive news, editorials or letters to the editor about DAB radio in the local or national newspapers. People have been especially enraged by the switch-over by coercion but recently

engagement for the local commercial station in Oslo - Radio Metro - forced off FM was engaging many listeners.

We reject the notion that increasing the number of channels offered by a constant number of broadcasters (3) means media pluralism. Still today, Norwegians have access to other channels on FM as local commercial or community radio as well as cross border listening mainly Sweden, Finland and Denmark. However, local commercial radio on FM is not available in the four major cities and in 2022 plans are to force local radio from the FM band.

## **Competition**

NRLF supports an open radio market which means that the operators of radio stations and the listeners should be able to choose freely between different radio platforms. This is still possible in all other European countries without restrictions.

The competition level in Norway has not increased with DAB rather the opposite. There are still only three national broadcasters controlling the media landscape. Just increasing the number of channels has nothing to do with competition between operators on a free market. Keeping commercial radio on FM out of the metropolitan areas and planning to force local radio from FM completely 2022 will of course not improve the broadcasting market in Norway. Too many local radio stations and too many listeners will not follow national radio and go DAB.

## **Radio listening - Penetration of digital radio equipment**

We are question the Ministry's ability to present true listening facts. The only objective measurement is made once a year by the Government Statistical Bureau (SSB). Other polling is made monthly by a private company on behalf of the national broadcasters.

According to latest estimates from SSB only 25 % of the population listen to a DAB receiver. Local radio and cross-border listening is not measured in the same PPM polling as national radio. The local radio listening is estimated to be approximately 15-20%.

The Ministry writes "digital listening habits have not yet been cemented". How can the Ministry expect the listening habits to be cemented? Does "digital listening" mean DAB and on-line radio?

We would like to point out that most DAB receivers sold are also FM-able. Also that a sizable number of DAB receivers are adapters installed in cars (Such a device receive the DAB signal and transmit on FM to the in-car radio).

It is a worrying fact for emergency alert systems that half of the private car fleet in Norway is not DAB equipped. Adding to this most busses and trucks are not. Adding to this most foreign-registered cars, busses and trucks visiting Norway estimated one million visits annually.

## Signal reception

Of course not everyone who is dissatisfied with the DAB system will communicate with the Ministry. The discontent will easily be found by following social media and reading the Norwegian newspapers for the last two years (also see above).

## Military usage of the DAB spectrum

Establishing DAB broadcasting on the 230-240 MHz band Norway *IS* interfering with military needs for example The Ship-Shore-Ship Buffer (SSSB) which is a real-time data link buffer system supporting data exchange between naval forces, including airborne assets, and their associated air defence ground environment units. SSSB Provides maritime and NATO airborne early warning interfaces and associated communications systems. This datalink is essential for the protection of European territory and is placed in the NATO UHF band assignment. This is a spectrum Common with other NATO members in the EU. Norway signed The North Atlantic Treaty 4. April 1949 which the Ministry of Culture have not taken into account. Several EU countries like Poland<sup>1</sup> and Norway<sup>2</sup> does now upgrade the SSSB system due to the military tensions in Northern Europe. With the current decision from the Authority,

---

<sup>1</sup> Poland upgrades the SSSB system in the NATO UHF band:

<http://www.gdaee.mil.gr/en/tenders/international/item/5249-ifb-co-14604-sssb-pol-%C2%A9provide-maritime-and-nato-airborne-early-warning-interfaces-and-associated-communications-systems-ship-shore-ship-buffer,-for-poland%C2%BB>

<sup>2</sup> The Norwegian SSSB upgrade is published across the EU:

<https://ted.europa.eu/TED/notice/udl?uri=TED:NOTICE:522239-2017:TEXT:EN:HTML&src=0>

the war tension in Europe can't be defended in any matter. This is an historical dangerous outcome of the current closure.

Prior to the DAB decision the Ministry organized consultations. We have noted that *Forsvaret* (the Defence Forces) authority was not invited. And it just happens that the Ministry never contacted the *European Incoherent SCATter Scientific Association*<sup>3</sup> (EISCAT) headquarter in Kiruna regarding the space radar tests in the same frequency band from transmitters in Arctic Norway (Tromsø and Svalbard), Sweden and Finland.

Before establishing DAB in Norway the Ministry could have rather considered allocating public broadcasting in vacant spaces in the lower part of the VHF band III (174-240 MHz). But 15-20 years ago the European Broadcasting Union (EBU) was challenging the military for frequency "territory" because DAB was planned to soon replace FM all over Europe.

Due to the very high military tension in Northern Europe, this will not happen as this is not in line with the North Atlantic Treaty.

### *Question 3*

*In your view, does the migration from FM to DAB entail a better national alert system via radio or are there weaknesses to the DAB system regarding contingency and if so how you intend to remedy them?*

### **Robustness of the DAB platform**

The DAB network is NOT technically more robust than the FM network. It is quite the opposite. NRLF would like to point out that this was an important reason why Sweden in 2015 rejected a proposal to replace FM with DAB. Experts regarded FM to be more robust for the Emergency Alert System (EAS). Also FM has doubled its capacity for data traffic

---

<sup>3</sup> EISCAT is a EU based international research infrastructure with RF systems in Sweden and Norway:  
<https://www.eiscat.se/>

with the new Radio Data System v 2.0 version which is developed in Germany.

Professional equipment has been used for measuring coverage - not a receiver typical for a DAB listener who will tell you another story.

Coverage at sea 50 km from the coast was set by the public broadcaster which also carried out the coverage measurements. Neither the government nor the shipping or fishing industries were consulted. In real life the broadcasting coverage decreased which is expected as FM has twice as much reach as DAB (lower frequencies have better reach than higher; 100 vs. 200 MHz bands).

#### *Question 4.*

*Please elaborate how you intend to make efficient use of the freed radio frequencies (We understand that radio frequencies are currently reserved for broadcasting transmission through international agreements (ITU))*

#### **Use of the FM band spectrum for other services.**

It is NOT possible that portions of the FM band may be used for other services than radio broadcasting. The Norwegian Communications Authority does NOT maintain the view that, there are several possible future uses of the FM band.

As the Ministry writes FM-transmissions from neighboring countries reach far into Norway (One third of the Norwegians listen to or are able to listen to Swedish public radio on FM). FM will be retained for decades in Finland and Sweden. Russia will also retain FM but will also go digital on this band with Digital Radio mondiale - DRM+. It is impossible to envisage any other use of the FM band in Norway than for broadcasting radio.

We would like to point out that a couple of years ago DAB radio was promoted by among many slogans that there was a need for the frequencies in the FM band.

This was of course not correct.

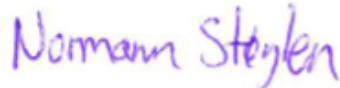
### 3. Final remarks

NRLF concludes that the reality emphasized from the Ministry of Culture, does not correspond to the end user experience or the real time situation for the broadcasting market or the military services in Norway.

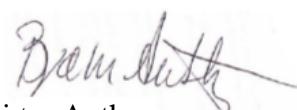
As the representative for the end user – in the EU terms the consumer definition, the ESA decision on closure case 78465, does not help the customer for a better media diversity.

The decision is not supported by the general public and with such false decision - the Authority will lose trust in the general public for protection individuals rights, for the work towards monopoly and vested interest. The decision will – on the same time make a uncertain future for Europe's security.

On behalf of Norsk Radiolytter-Forening;

A handwritten signature in blue ink that reads "Normann Støylen".

Normann Støylen  
Chairman of the board - NRLF

A handwritten signature in blue ink that reads "Bjørn Authen".

Bjørn Authen  
Board member - NRLF